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66TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 536.

TO PUNISH OFFENSES AGAINST THE EXISTENCE OF THE GOVERNMENT OF THE UNITED STATES.

JANUARY 12, 1920.—Referred to the House Calendar and ordered to be printed.

U. S. Congress. House.

Mr. GRAHAM of Pennsylvania, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 11430.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 11430) entitled "An act to punish offenses against the existence of the Government of the United States, and for other purposes," having considered the same, and after making a number of changes, verbal corrections, and alterations of the text, amended the same by striking out all after the enacting clause and inserting the bill as thus corrected, altered, and perfected, do recommend that the amendment be adopted and that the bill as thus amended do pass. The amendment is as follows:

AMENDMENT.

That whoever incites, sets on foot, assists, or engages in any insurrection or rebellion against the United States or the authority or laws thereof, or whoever sets on foot or assists or engages in the use of force, or violence, with intent to destroy or cause to be destroyed or change or cause to be changed, or to overthrow or cause to be overthrown, the Government of the United States, and the death of any person or persons is caused or results directly therefrom, shall be guilty of a felony, and on conviction shall be punished by death or shall be imprisoned not more than twenty years or fined not more than $20,000, or both, and shall forever be debarred from holding office under the United States: *Provided, however*, That the death penalty shall not be imposed unless recommended in the verdict of the jury. If two or more persons conspire to commit any offense defined in this section, they shall each be subject to the punishment provided in this section for such offense.

SEC. 2. Whoever incites or sets on foot or assists or engages in the use of force or violence with intent to destroy or cause to be destroyed or change or cause to be changed or to overthrow or cause to be overthrown the Government of the United States, and death does not result, shall, on conviction, be imprisoned not more than twenty years or fined not more than $20,000, or both. If two or more persons conspire to commit any offense defined in this section, they shall each be subject to the punishment provided in this section for such offense.

SEC. 3. That no person shall orally or by writing, printing, or the use of any sign, symbol, picture, caricature or otherwise teach, incite, advocate, propose, or advise,

or aid, abet, or encourage forcible resistance to or forcible destruction of the Government of the United States, its Constitution, laws, and authority, or the governments of the several States, all or any of them, or the existence of constituted government generally, or orally or by writing, printing, or the use of any sign, symbol, picture, caricature, or otherwise teach, incite, advocate, propose, or advise, aid, abet, encourage, or defend the destruction of human life or the injury of any human being or the injury or destruction of public or private property as a means of changing the Constitution, laws, or Government of the United States or defeating the authority thereof.

SEC. 4. That no person shall write or knowingly print, publish, edit, issue, circulate, distribute, transport by express or otherwise, display, or sell any book, pamphlet, newspaper, document, handbill, poster, or printed, written, or pictorial matter of any kind or form wherein or whereby the overthrow or change of the Government of the United States or the Constitution, laws, and authority thereof by force or violence or kind or form wherein or whereby the overthrow or change of the Government of the United States or the Constitution, laws, and authority thereof by force or violence or by levying war against the same or by resistance to or rebellion against the execution of any law of the United States by force or violence is incited, suggested, taught, advocated, or advised.

SEC. 5. That no person shall display or exhibit at any meeting or parade, or in any other place, any red flag or banner as a symbol of anarchy, or of any of the purposes forbidden in this act, and the display or exhibition of such a flag or banner in any meeting or parade shall be prima facie evidence that it is so displayed and exhibited as such symbol, and no person shall display or exhibit at any meeting, gathering, or parade, or in any other public place, any flag, banner, emblem, picture, motto, or device which tends to incite or indicates a purpose to overthrow, by violence or by physical injury to person or property, the Government of the United States, or all government, or to overthrow, change, or defeat the Constitution of the United States and the laws and authority thereof.

SEC. 6. That every book, magazine, newspaper, document, handbill, poster, or written, pictorial, or printed matter, memorandum, sign, symbol, or communication of any form wherein or whereby the overthrow of the Government of the United States by force or violence, or resistance to or rebellion against the authority of the Government or the overthrow, change, or defeat of the Constitution of the United States or the laws or authority thereof by force or violence is advocated, advised, or incited, or wherein or whereby the use of force or violence or physical injury to or the seizure or destruction of persons or property is advocated, advised, defended, or incited as a means toward the accomplishment of industrial, economic, social, or political change, or wherein or whereby an appeal is made to racial prejudice the intended or probable result of which appeal is to cause rioting or the resort to force and violence within the United States or any place subject to the jurisdiction thereof, is hereby declared to be nonmailable, and the same shall not be deposited in any post office for mailing or be conveyed in the mails or delivered from any post office or by any letter carrier: *Provided*, That nothing in this act shall be so construed as to authorize any person other than an employee of the Dead Letter Office, duly authorized thereto, or other person, upon a search warrant authorized by law, to open any letter not addressed to himself.

SEC. 7. That no person shall import or cause to be imported into the United States, or any place subject to its jurisdiction, any matter declared in this act to be nonmailable and not transportable, or to transport or cause to be transported any such matter from one State into another or into any place subject to the jurisdiction of the United States.

SEC. 8. That no person shall knowingly use or attempt to use the mails or the Postal Service of the United States, or knowingly transport or attempt to transport by express or otherwise, by public or private conveyance, any matter declared by sections 6 and 7 of this act to be nonmailable and not transportable.

SEC. 9. That any association, gathering, assembly, society, or corporation which seeks directly or indirectly by force or violence, or by injury to or destruction of human beings, or public or private property, to bring about a change in the Constitution or laws or authority of the Government of the United States, or of any State thereof, or of all forms of organized government, or which teaches, advises, proposes, threatens, or defends the unlawful use of force or violence in any form to bring about any such result, or which attempts to prosecute or pursue such purpose, is hereby declared to be unlawful.

SEC. 10. That no person shall act as an officer of any such unlawful association, or knowing the object, purpose, teaching, or doctrines of such unlawful association, become a member thereof or become affiliated therewith, or continue to be a member

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thereof or affiliated therewith, or contribute any money or other thing of value thereto or to anyone for its use, or rent any room, building, or place for the use of said unlawful association, or permit the occupation by such unlawful association or any committee or branch thereof of any room, building, or other place under his ownership or control.

SEC. 11. That the giving, loaning, or promising of anything of value to any such unlawful association shall constitute affiliation with such unlawful association, and the giving, loaning, or promising of anything of value to any person or partnership or unlawful association engaged in advertising, teaching, advocating, or defending any of the things the teaching, advocacy, or defense of which is forbidden in this act shall be prima facie evidence of teaching, advocating, or defending said forbidden things against the person so giving, promising or loaning anything of value as aforesaid.

SEC. 12. Any alien convicted under any of the provisions of this act after serving his sentence shall be taken into custody and be deported under the immigration laws of the United States then in force. Any person convicted under this act who has declared his intentions of becoming a citizen but has not been naturalized shall be forever ineligible to citizenship, and it shall be the duty of the Attorney General to institute proceedings to cause his petition and declaration of intention to be dismissed and annulled and all court proceedings in his case quashed and to furnish to the Secretary of Labor such data as to enable him to cause such person to be deported under the immigration laws of the United States then in force. The conviction of any person who is a naturalized citizen of the United States of any of the things forbidden in this act shall be sufficient to authorize the cancellation of his or her certificate of naturalization in the manner provided by the naturalization laws of the United States then in force. It shall be the duty of the Attorney General to institute proceedings and conduct the same to a final judgment immediately after conviction and sentence of the naturalized citizen aforesaid. Every alien deported under this act is hereby forbidden to again enter the United States or any Territory or possession thereof. It shall be the duty of the Attorney General of the United States to enforce this provision against all deported aliens returning to the United States as aforesaid.

SEC. 13. That in any investigation or prosecution for any of the offenses specified in this act no person shall be excused from attending or testifying or deposing, or from producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty of forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which in obedience to a subpœna and under oath he may so testify, or in obedience to a subpœna shall produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 14. That if any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 15. That section 5334 of the Revised Statutes, section 4, act of March 4, 1909 (Thirty-fifth volume, Statutes at Large, page 1088), be, and the same is hereby, repealed. Any offenses heretofore committed in violation of said section 5334 and all cases pending thereunder may be prosecuted and punished as therein provided, in the same manner and with the same effect as if this section had not been enacted.

SEC. 16. That any person convicted of violating any of the provisions contained in any of the sections of this act, except sections 1 and 2, shall be punished by being imprisoned for not more than twenty years or fined not more than $20,000, either or both. And any citizen of the United States convicted under this act shall be forever debarred from voting thereafter and holding any office of profit, honor, or trust under the United States.

A large number of bills were introduced at the present Congress for the purpose of punishing anarchy, sedition, the teaching, advising, and inciting to the use of violence and force to overthrow the Government of the United States and the Constitution and laws thereof, all of which, while differing widely as between themselves, contained valuable provisions, but no one of them covered the whole ground. All of the bills were referred to a special subcommittee for the purpose of considering them and either selecting one or framing a new bill which might be recommended as furnishing a remedy full and

comprehensive for the present existing evil. The committee consisted of Messrs. Husted, of New York; Gard, of Ohio; and Graham, of Pennsylvania.

They considered the following bills:

H. R. 11281, introduced by Mr. Begg, of Ohio.
H. R. 11277, introduced by Mr. Hicks, of New York.
H. R. 11231, introduced by Mr. Raker, of California.
H. R. 11089, introduced by Mr. Siegel, of New York.
H. R. 10235, introduced by Mr. Blanton, of Texas.
H. R. 10614, introduced by Mr. Summers, of Washington.
H. R. 10616, introduced by Mr. Hadley, of Washington.
H. R. 10650, introduced by Mr. Davey, of Ohio.
H. R. 10379, introduced by Mr. Byrnes, of South Carolina.
H. R. 10736, introduced by Mr. Kelley, of Michigan.
H. R. 10698, introduced by Mr. Foster, of Ohio.
H. R. 11117, introduced by Mr. Raker, of California.
H. R. 10210, introduced by Mr. MacGregor, of New York.

Also two other bills introduced by members of the subcommittee, one by Mr. Husted, of New York (H. R. 11332), and the other by Mr. Graham, of Pennsylvania, being the one adopted by the Committee on the Judiciary and the subject of this report.

It is a composite bill, which freely took from the bills considered, rearranging the subjects and adding new matter.

Mr. Davey, of Ohio, deserves great credit for the time, labor, and money bestowed on this subject. He at great personal expense communicated with every newspaper in the United States and further by writing to a multitude of people evoked and crystallized public opinion and centralized public thought upon this subject. He received requests from chambers of commerce all over the United States, societies and organizations, including the American Legion, asking for the speedy enactment of laws to protect the country from the present menace.

The American Legion was represented before the general committee by counsel, John Thomas Taylor, Esq., who urged speedy legislation and expressed approval in a general way of the bill H. R. 11430 under consideration at the time.

The attack upon a high official of the United States for doing this duty fearlessly; the shooting down on the highway of some of our brave soldiers for their avowed adherence to law and order and the preservation of our Government Constitution and laws; and numerous other instances of outrage by force and violence aimed at the existence of our institutions by aliens and others, including some of our own citizens, convince us all that legislation is needed, and that right speedily. It behooves the Congress to quickly respond to the vigorous call for legislation coming from every part of the country because of the perpetration of these outrages and also because of the revelations brought home to us by recent investigations showing the vigor and extent of the pernicious and dangerous teachings of aliens and others who would destroy our Government by force; destroy all government by force and create a state of anarchy. The request of the Attorney General who has asked for legislation should be answered without delay.

In this land of ours where our forefathers set up a Government of the people, by the people, and for the people, upon the corner stone

of "the rule of the majority," there is and can be no excuse for the use of force and violence to effect changes in our Constitution and laws. "There is no right of revolution where the people have the right to vote." Especially is there no excuse for the alien, coming from lands of oppression and tyranny to this land of freedom, to perform as the apostle of assassination, murder, and other crimes, and become the teacher of a foreign propaganda of force and violence.

The right of free speech and a free press will always be maintained inviolate. The advocacy of any change by lawful means through the will and votes of a majority is still open to everyone. Whenever a legal majority of our people vote for a change, that change will be brought about.

A government incapable of defending its own life from force and violence, and preserving law and order and the lives of its people, and which is left unclothed with power, adequate and complete, to crush out this spirit of force, violence, and destruction, and make America safe for our people, is not worthy of the name of government.

This bill (H. R. 11430), in addition to the aid given in the immigration laws, is designed, as its title indicates, to clothe our Government with adequate power and furnish it with remedies to enable it to cope with the enormous evil confronting us. While seeking to do this effectually, the bill is confined to the restraint and punishment of the use of force and violence and leaves "free speech" and a "free press" untrameled and the right to advocate or teach any reform or change by peaceful and lawful methods without a limitation.

THE BILL.

Section 1 is intended to give the Federal courts a right to inflict the death penalty in cases where murder is the result of the use of force and violence. If a man is tried and convicted in a State court he may be sentenced to death for murder or killing, in perpetration of a felony. Why should not the Federal courts have the same power? They have no such power now. This section does not increase the penalties, or create a new punishment. By the enactment into law of this section the Federal courts will be possessed of this needed power. The crimes contemplated therein are national ones; the combinations, associations, and groups of the men and women who seek to destroy our Government are scattered all over the land. These crimes in their ramifications are Nation wide. Surely the Federal courts should have power to take jurisdiction of the whole case and punish as fully as any State court could punish. This does not impose the death penalty as a new punishment. It only gives the Federal court *equal power with the State court* to inflict it.

Without this section the Federal courts would be powerless to impose the death penalty where the outrage involved the death of human beings.

We would refer for illustration to a recent event in which a bomb was exploded at the home of a high official of the Government. True, the miscreant was self-executed, but suppose he had lived and his dastardly work had caused the death of the official or some member of his family; without section 1 the Federal courts could not try him

for killing but only for the outrage. The court of the District of Columbia only could try him for the felony of murder and punish him accordingly, but if section 1 becomes the law and such a case arises hereafter, the perpetrator could be tried in the Federal court and if found guilty could be sentenced to death, a punishment richly deserved.

There are reasons why the Federal courts should have jurisdiction of the whole subject. Their subpoena runs throughout the land in criminal cases, while the State court can only summon within the limits of the State's territory. Depositions are not permissible, for the accused must be confronted face to face by the witnesses. The offense being against the existence of the Federal Government and the evil being national in its extent and scope, the prosecution ought to be backed up by the powerful national agencies for the suppression of such crimes. The trial ought to be in the Nation's courts, with power to punish equally as great as the power possessed by the States' courts. This section 1 will secure adequate punishment, whether the State court acquires jurisdiction or the Federal court does.

The death penalty *may not be inflicted in any case unless the jury in the case shall recommend that it should be imposed.*

A conspiracy clause is added to cover two or more persons conspiring to commit the acts or any of them prohibited in this section.

Section 2 provides for adequate pubishment, when death is not caused or results directly from the doing of the things prohibited in the section. This section also has a conspiracy clause. A separate conspiracy section was in the original bill but it was stricken out and the bill shortened and the same result reached by the addition to each section of a short paragraph covering conspiracy.

Section 3 forbids the teaching, advocating, etc., of the use of force or violence to change, overthrow, or destroy the Government of the United States or the Constitution or the laws thereof.

Section 4 makes it a crime to write, print, etc., publish, issue, circulate, distribute, or transport books, pamphlets, etc., containing teachings, etc., described in section 3.

Section 5. The use of a red flag or banner is forbidden at parades and meetings, the fact of use is made prima facie evidence, of use for an unlawful purpose. And in addition no person shall exhibit any flag, banner, symbol or device *which tends* to incite, etc., to force or violence in order to effect a change in Government, etc. Whether or not the flag, banner, or device incites to violence is for the determination of a jury.

Section 6 deals with making all such unlawful books, magazines, and literature unmailable.

Section 7 forbids importation, transportation, etc., of all such unlawful literature.

Section 8 makes the person who uses the mails for such unlawful literature, or transports the same, liable to punishment.

Sections 9, 10, and 11 cover unlawful associations and officers, members, and persons affiliated therewith. They also cover the giving, loaning, or promising money or anything of value for the use of such unlawful associations or for the use of any person engaged in the work of violating the provisions of the act, and also punishes the renting or granting the use of any building or place to any such

unlawful association, committee, or branch thereof. These sections cover gatherings, societies, or associations, their officers and members, but would also reach out to punish the advocates who remain in the background and furnish the "sinews of war." The inactive contributor is a highly dangerous element. Without his gifts of money and loans the movements would be weak indeed.

Section 12 makes any alien, or person who has declared his intentions of becoming a citizen, after conviction and after serving his sentence for any offense covered by this act, subject to deportation. A naturalized citizen is made subject to cancellation of his naturalization.

This section forbids any person deported under the act ever to return, and makes him liable to punishment if he does return.

Section 13 forces everyone to testify or produce documents, etc., but relieves from prosecution the person who testifies in obedience to a subpœna or produces in response to a subpœna duces tecum papers or documents, except for perjury committed in so testifying.

Section 14 provides against declaring the whole act unconstitutional because some part of the act may be so declared.

Section 15 declares the repeal of section 5334 of the Revised Statutes.

Section 16 provides sentence for offenses other than those defined in sections 1 and 2 of the act. It also provides that any citizen who is convicted under the act shall be disfranchised and debarred from holding any office of honor, trust, or profit under the United States.

The whole bill is drawn along the line of punishing the use of force and violence exclusively, and is a comprehensive law to enable the Government to preserve its own existence and the Constitution and laws of the United States and the governments of the several States. There is wide latitude with regard to punishment. The sentence can be made to fit the crime under all of its circumstances; and the range of punishment is so very wide (in imprisonment, from nothing up to 20 years; and in fining, from nothing up to $20,000) that there need be no injustice or unreasonable punishment imposed.

The life of the Nation is threatened to-day, the security and safety of our citizens is imperiled, and it is firmly believed that a strong remedy is demanded by our people—and this bill furnishes such a law as will, we believe, satisfy the country and enable the authorities to grapple with the growing evil in our midst.

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